

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
In the Business Court

Edward W. Miller, Circuit Court Judge

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Case No. 2012-CP-23-2325  
Appellate Case No. 2019-001909

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**RECEIVED**

**Dec 17 2020**

**SC Court of Appeals**

Stop-A-Minit #17, LLC, .....Appellant,

V.

Beck Enterprises, Inc., .....Respondent.

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APPENDIX TO RECORD ON APPEAL

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Post Office Box 5709  
West Columbia, South Carolina 29171  
803-796-9160  
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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Stop-A-Minit #17, LLC, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Beck Enterprises, Inc. )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-23-2325

**COMPLAINT  
 (Declaratory Judgment)**

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMER  
 2012 APR -3 K  
 9:38

The Plaintiff above-named, would Complain against the Defendant herein as follows:

**FOR A FIRST CAUSE OF ACTION**

(Declaratory Judgment)

1. Plaintiff Stop-A-Minit #17, LLC, ("SAM") is a domestic business entity, and it owns a convenience store and gas station property located at 1398 North Pleasantburg Drive in Greenville County, South Carolina.
2. Upon information and belief, Defendant Beck Enterprises, Inc., ("Beck") is a domestic business entity owned by Shirley and Mohamad Mereby and has its principal offices in Greenville County, South Carolina.
3. This Court has jurisdiction over the parties hereto and the subject matter herein. Venue is proper before this Court.
4. This cause of action rises under the South Carolina Declaratory Judgment Act. S.C. Code Ann. 15-53-10 *et. seq.*
5. Plaintiff prays for an Order of this Court declaring the rights and obligations of

the parties, one to another, pursuant to an Indemnification and Hold Harmless Agreement entered by the parties which is attached hereto and incorporated herein by reference as Exhibit "A".

6. On June 6, 2010, Drake Convenience, LLC, (Drake) purchased the inventory and took possession of the property from Shirley and Mohamad Mereby. Drake leased the location from SAM and operated the gas station and convenience store. Drake and SAM have the same members and are affiliated entities. The real estate closing took place on June 7, 2010, between the Merebys as sellers and SAM as the buyer, and the Indemnification and Hold Harmless Agreement was signed by the parties hereto, SAM and Beck, on June 9 and 10, 2010. (See Exhibit A attached.)

7. Cary Oil Co., Inc., ("Cary") had a pre-existing motor fuel supply agreement with Beck for Exxon branded motor fuels to be sold at this location. As part of this motor fuel supply agreement, Cary and Beck had an obligation to keep the location branded as an Exxon station for a certain period and were required to pay Exxon certain monies on an amortized schedule if the station did not remain branded Exxon for the remaining period. On or about June 7, 2010, Cary ceased supplying motor fuel to this station and O'Dell Oil Co., (O'Dell) began to supply Exxon branded motor fuel to Drake. On or about July 22, 2010, Cary assigned the motor fuel supply agreement to O'Dell. On or about September 2010, SAM and Drake decided to de-brand the station. Because the supply for the station had been taken over by O'Dell, Exxon drafted Forty Eight Thousand and Six Hundred and Forty Eight and 00/100 (\$48,648.00) Dollars from O'Dell's account with Exxon based upon the amortized schedule following the de-branding of the station. Thereafter, SAM caused Drake to reimburse O'Dell Forty Eight Thousand and Six

Hundred and Forty Eight and 00/100 (\$48,648.00) Dollars. Despite O'Dell assuming Cary's obligations to Exxon and undertaking obligations to supply Drake, Cary continued to control the credit card payments made for fuel purchases at this station, even though Cary was no longer delivering fuel. Cary eventually paid O'Dell and/or Drake back these monies minus Twenty Seven Thousand Four Hundred Thirteen and 30/100 (\$27,413.30) Dollars, which Cary is claiming as its lost profit from Beck's alleged breach of the motor fuel supply agreement. As a result, Drake sued Cary in South Carolina state court to recover the Twenty Seven Thousand Four Hundred Thirteen and 30/100 (\$27,413.30) Dollars, which are funds representing payment to Drake from its customers for fuel Drake purchased from O'Dell after the sale of the station from the Merebys to SAM. Instead of turning over this money to Drake, which Cary had not earned because it had not supplied Drake with fuel, Cary kept these monies for fuel supplied by O'Dell to Drake, for which Drake had paid O'Dell. Cary, in turn, brought third party claims against Beck, the Mereby's, and O'Dell, claiming, *inter alia*, damage for lost profits from its contract with Beck. (See Pleadings attached and incorporated herein by reference as Exhibit "B".) This underlying case was filed in Anderson County on September 7, 2010, and transferred to Greenville County by order of the Honorable R. Lawton McIntosh on July 21, 2011.

8. SAM believes it has met all its indemnification obligations under the Indemnification and Hold Harmless Agreement by ensuring that Forty Eight Thousand Six Hundred and Forty Eight and 00/100 (\$48,648.00) Dollars was paid to Exxon, while Beck believes it is owed further indemnification against claims made by Cary and costs incurred there for. The parties to this suit disagree over the application of Paragraphs 1 and 2 of the Indemnification and Hold Harmless Agreement and whether and how it applies to the underlying

lawsuit. A determination of the rights of the parties in this lawsuit will impact the outcome of the underlying suit and may enable the parties to resolve the underlying suit.

WHEREFORE, having fully complained against Defendant above named, Plaintiff prays for an Order declaring the rights of the parties, one to another pursuant to the Indemnification and Hold Harmless Agreement; and for such other and further relief as this Court might deem just and proper.

MOORE, TAYLOR & THOMAS, P.A.

BY: William H. Edwards

William H. Edwards  
Attorney for the Plaintiff  
P.O. Box 5709  
West Columbia, SC 29171  
(803) 796-9160

West Columbia, South Carolina  
March 30, 2012

# Exhibit A

## INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

This Indemnification and Hold Harmless Agreement (the "Agreement") is entered into as of 7<sup>th</sup> day of June, 2010, by and between Stop-A-Minit #17, LLC ("Purchaser") and Beck Enterprises, Inc. ("Seller").

### WITNESSETH:

WHEREAS, Purchaser purchased certain real property with a street address of 1398 North Pleasantburg Drive, Greenville, SC 29607 (the "Property") from Mohamad Mereby and Shirley A. Mereby; and

WHEREAS, Seller owned certain improvements, equipment, fixtures, furniture and inventory (collectively the "Personal Property") located on the Property, which Seller sold to Purchaser; and

WHEREAS, Seller and Cary Oil Company, Inc. were parties to a certain Motor Fuel Supply Agreement Exxon-Branded Motor Fuels dated May 1, 2003 (the "Fuel Agreement"); and

WHEREAS, Purchaser agreed to indemnify and hold the Seller harmless from any liability resulting from or incident to the Fuel Agreement subject to the terms below:

NOW, THEREFORE, in consideration of Seller's willingness to sell the Personal Property, the Purchaser agrees to the following terms and conditions:

1. **Indemnification by the Purchaser:** Subject to the limitations below, the Purchaser covenants and agrees that it will indemnify, defend, protect, and hold harmless the Seller at all times from and after the date of this Agreement from and against all claims, damages, actions, suits, proceedings, demands, assessments, adjustments, costs and expenses (including specifically, but without limitation, reasonable attorneys' fees) incurred by such Indemnitee as a result of or incident to the Fuel Agreement.

2. **Limitation of Responsibility to Indemnify.** Notwithstanding anything to the contrary herein, the obligation of the Owners to indemnify the Buyer is limited to transactions occurring on or after the date of this Agreement. Costs related to fuel purchases entered into prior to the date of this Agreement are the responsibility of Seller. Further, if the Purchaser should terminate the Fuel Agreement prior to its full term, then the Purchaser's maximum liability for such early termination shall be as follows:

- A. \$72,972.00 if such early termination occurs and is effective before September 1, 2010; and
- B. \$48,648.00 if such early termination occurs and is effective on or after September 1, 2010.

3. **Counterparts; Electronic Signatures.** This Agreement may be executed in any number of counterparts which when considered as a whole shall be deemed to be an original and

one and the same instrument. For purposes of the execution of this Agreement, facsimile and other electronic signatures shall be deemed to be originals.

4. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transaction contemplated herein and it supersedes all prior discussions, undertakings or agreements between the parties. This Agreement shall not be modified except by a written agreement executed by both parties.

In witness whereof, the parties have executed this Agreement and set their hand and seal as of the date first written above.

WITNESSES:

*[Signature]*  
*[Signature]*

PURCHASER:

Stop-A-Minit #17, LLC

BY: *[Signature]*

ITS: Manager

SELLER:

Beck Enterprises, Inc.

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

# Exhibit B

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

DRAKE CONVENIENCE, LLC, )

Plaintiff(s) )

vs. )

CARY OIL COMPANY, INC., )

Defendant(s) )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 04- 03351

(Please Print)

Submitted By: William H. Edwards

Address: PO Box 5709 West Columbia, SC 29171

SC Bar #: 71199

Telephone #: 803-796-9160

Fax #: 803-791-8410

Other:

E-mail: will@mttlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

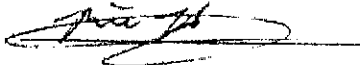
DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

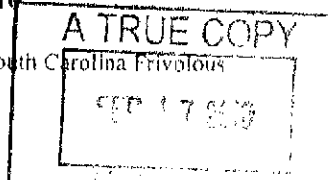
NATURE OF ACTION (Check One Box Below)

- |                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input checked="" type="checkbox"/> Other (199)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20-CP-_____</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>                                                                                                                                            | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Label (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>                                                                                                                                                                      |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input checked="" type="checkbox"/> Other (599)</li> </ul>                                                                                                                   | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Driver's License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul>                                                | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SC DOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Commission (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> </ul>                                                                                                             | <ul style="list-style-type: none"> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of-State Depositions (650)</li> <li><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> </ul>                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

Submitting Party Signature: 

Date: 9/16/10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,  
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Drake Convenience, LLC,

Plaintiff,

vs.

Cary Oil Company, Inc.,

Defendant.

C.A. No.:2010-CP-04- 03351

**SUMMONS**

TO THE DEFENDANT ABOVE-NAMED:

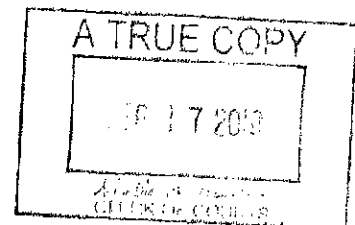
YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this matter, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to said Complaint upon the subscriber at his office, 1700 Sunset Boulevard, Post Office Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the COMPLAINT within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

MOORE, TAYLOR & THOMAS, P.A.

BY: 

William H. Edwards  
Attorney for the Plaintiff  
1700 Sunset Boulevard  
Post Office Box 5709  
West Columbia, SC 29171  
(803) 796-9160

West Columbia, South Carolina  
September 16, 2010



STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Drake Convenience, LLC,  
Plaintiff,

C.A. No.: 2010-CP-04- 03351

vs.

Cary Oil Company, Inc.,

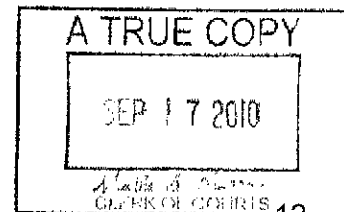
**COMPLAINT**  
**(Fraud, Negligence, Breach of Fiduciary**  
**Duty, Conversion, Unfair Trade Practices**  
**Act)**

Defendant.

Plaintiff, herein complaining against Defendant, would respectfully show unto  
this Honorable Court:

**FOR A FIRST CAUSE OF ACTION**  
**(Fraud)**

1. Plaintiff is a domestic business entity with its principal place of business in Anderson County, State of South Carolina and is engaged in the retail sale of gasoline and other petroleum products in Anderson and Greenville Counties in the State of South Carolina.
2. Upon information and belief, Defendant is a foreign business entity and is engaged in the business of supplying gasoline and other petroleum products to retail service stations such as Plaintiff's in the State of South Carolina.
3. At all relevant times hereto, Plaintiff acted by and through its authorized agents, servants, employees and/or officers, and Defendant acted by and/or through its agents, servants, employees, and/or officers.



3. This Court has jurisdiction over the parties hereto and subject matter herein. Venue is proper before this Court.

4. On or about May 1, 2003, Defendant entered into a motor fuel supply agreement for Exxon branded motor fuels to be sold to Beck Enterprises, Inc., for a service station located at 1398 North Pleasantburg Drive in Greenville County, South Carolina. This motor fuel supply agreement included an amortization schedule for the pay back of imaging monies advanced by Exxon for this location. A copy of the motor fuel supply agreement for Exxon branded motor fuels is attached hereto and incorporated herein by reference as Exhibit "A".

5. Defendant was the exclusive supplier for this station until it assigned the supply agreement to a different Exxon distributor on or about June 7, 2010.

6. On or about June 7, 2010, Plaintiff purchased this station subject to the motor fuel supply agreement for Exxon branded motor fuels.

7. Defendant refused to immediately assign the supply agreement and turn over the credit card accounts to the alternate dealer until after Defendant had collected \$121,084.18 worth of credit card receipts from Plaintiff's sales at this location from on or about June 22, 2010, through on or about July 7, 2010.

8. Defendant insisted on an arrangement by which the credit card receipts would go into an account controlled by Defendant and then Defendant would release funds to Plaintiff and/or Plaintiff's alternate supplier for this location for petroleum products which were branded Exxon, but which were not delivered by Defendant.

9. Defendant has turned over all but \$27,413.30 of Plaintiff's credit card receipts to date.

10. Defendant is claiming it is owed this amount of money as liquidated damages and/or lost profits and/or contract damages from Plaintiff's seller, Defendant's former customer, who sold the location to Plaintiff.

11. Defendant never had a contract with Plaintiff. There is no contractual privity between these parties.

12. Defendant never supplied petroleum products to this location for the benefit of Plaintiff. Plaintiff does not owe Defendant any money, or any language entitling Defendant to recover alleged lost profits.

13. Furthermore, upon information and belief, Defendant's contract with Plaintiff's sellers, does not include a liquidated damages clause or any language entitling Defendant to recover alleged lost profits/income.

14. Plaintiff has made demand, but Defendant has refused to turn over the \$27,413.30, to date. A copy of this demand is attached hereto and incorporated herein by reference as Exhibit "B".

15. But for this arrangement insisted upon by Defendant, Defendant would never have had access to Plaintiff's credit card receipts and would never have been in control of Plaintiff's money.

16. Furthermore, Defendant has made demand upon Plaintiff's seller for Twenty-Five Thousand (\$25,000) Dollars for alleged lost profit/income. A copy of Defendant's demand upon Plaintiff's seller is attached hereto and incorporated herein by reference as "Exhibit C".

17. Upon information and belief, Defendant incorrectly reported the start date of the motor fuel supply agreement to Exxon as September 1<sup>st</sup> as opposed to May 1<sup>st</sup>. The

failure to accurately report the date of the commencement of this supply agreement had the result of artificially extending the amortization period for the imaging monies owed to Exxon in the event Plaintiff de-brands this location by four (4) months.

18. At all times prior to and including the date of purchase of this location, Plaintiff desired and intended to de-brand the station as soon as economically practicable. Based upon the commencement date of May 1, Plaintiff anticipated, intended and should have been able to de-brand immediately for the cost of \$48,648.00. However, the inaccurate date reported by Defendant to Exxon would require Plaintiff to pay Exxon \$72,972.00 for early termination.

19. As a direct and proximate result of Defendant's failure to accurately report the commencement date of the motor fuel supply agreement, Plaintiff has been forced to forego de-branding until at least September 1, 2010, in order to avoid a 20% increase in the amortization schedule for the imaging monies owed to Exxon.

20. Defendant represented to Plaintiff that it would maintain control of the credit card account for Plaintiff, even though Defendant was not supplying Plaintiff with petroleum products under the supply agreement until such time as the Defendant's liability for the Exxon imaging monies would be transferred to Plaintiff's alternate supplier and that Defendant would properly handle Plaintiff's credit card account.

21. The above referenced representations by Defendant to Plaintiff were false in that Defendant has failed and refused, and, upon information and belief, never intended to properly handle Plaintiff's credit card account and to remit 100% of Plaintiff's credit card receipts to Plaintiff for fuel delivered by Plaintiff's alternate supplier.

22. In fact, Defendant has now retained \$27,413.30 of Plaintiff's credit card

receipts, but has not delivered any petroleum products to Plaintiff. Defendant is claiming that this sum is its compensation for liquidated damages and lost profit owed to it by Plaintiff's seller, which was Defendant's previous customer for this location.

23. Plaintiff does not owe Defendant any money. In fact, Defendant now owes Plaintiff this money.

24. Plaintiff would never have agreed to allow Defendant to maintain control over the credit card account had Plaintiff known Defendant would claim to retain any money from this account for liquidated damages and/or lost profit allegedly owed to Defendant by Plaintiff's seller. Therefore, Defendant's above described representations were material.

25. Defendant either knew the above referenced representations to Plaintiff were false or Defendant recklessly disregarded the truth or falsity of such representations, with the intent that the representations be acted upon.

26. Plaintiff was ignorant of the falsity of the above referenced representations and rightly relied on the truth of such representations.

27. As a direct and proximate result of Plaintiff's above referenced reliance, Plaintiff was damaged in that it has lost the use and enjoyment of this money; it has lost income and profit; it has incurred cost, fees and delays; and it has been otherwise damaged, all to its damage both actual and punitive.

28. Plaintiff is entitled to a judgment against Defendant for actual and punitive damages.

**FOR A SECOND CAUSE OF ACTION**  
**(Negligence)**

29. Plaintiff hereby reasserts and realleges each and every allegation set forth

above as if set forth here verbatim.

30. Defendant owed Plaintiff a duty to correctly and accurately report the effective date of the motor fuel supply agreement between Defendant and Plaintiff's seller. Defendant breached that duty by inaccurately reporting the effective date of the agreement, as set forth above.

31. Defendant's failure to accurately report the effective date of the supply agreement was negligent, grossly negligent, willful, wanton and/or reckless and proximately caused Plaintiff to incur delays and additional costs in that Plaintiff could not debrand this location in a timely manner and in that Plaintiff incurred additional costs in paying for branded petroleum products over and above the costs for unbranded petroleum products for a period of approximately three (3) months for a total increase in costs of Eleven Thousand One and Seventy-Seven One Hundredths (\$11,001.77) Dollars.

32. As a direct and proximate result of this breach, Plaintiff has been damaged in that it has incurred costs and delays; has lost profit and income; and has been otherwise damaged as set forth above and herein, all to its damage both actual and punitive.

33. Plaintiff is entitled to a judgment for actual and punitive damages.

**FOR A THIRD CAUSE OF ACTION**  
**(Promissory Estoppel)**

34. Plaintiff hereby reasserts and realleges each and every allegation set forth above as if set forth here verbatim.

35. Defendant's above referenced representations constitute an unambiguous promise that it would accurately and properly remit 100% of Plaintiff's credit card receipts to Plaintiff for purchased fuel from deliveries from Plaintiff's alternate supplier.

36. Plaintiff reasonable relied on this promise.

37. Plaintiff's reliance was expected and foreseeable by Defendant.

38. As a direct and proximate result of Plaintiff's reliance on Defendant's unambiguous promises as set forth above, Plaintiff has been damaged as set forth above and herein, all to Plaintiff's damage, both actual and punitive.

39. Plaintiff is entitled to a judgment against Defendant for actual and punitive damages.

**FOR A FOURTH CAUSE OF ACTION**  
**(Breach of Fiduciary Duty)**

40. Plaintiff hereby reasserts and realleges each and every allegation set forth above as if set forth here verbatim.

41. Defendant's above referenced representations and conduct created a fiduciary duty owing to Plaintiff, as Plaintiff reposed special confidence in Defendant to properly handle the credit card receipts and remit 100% of the funds thereunder such that Defendant, in equity and good conscience, was bound to act in good faith and with due regard to Plaintiff's interest.

42. As a direct and proximate result of Defendant's failure to properly handle Plaintiff's credit card receipts and to remit 100% of the same to Plaintiff as set forth above, Defendant has breached its fiduciary duty to Plaintiff and Plaintiff has been damaged as set forth above and herein, all to its damage both actual and punitive.

43. Plaintiff is entitled to a judgment actual and punitive damages.

**FOR A FIFTH CAUSE OF ACTION**  
**(Conversion)**

44. Plaintiff hereby reasserts and realleges each and every allegation set forth above as if set forth here verbatim.

45. At all times relevant hereto, Plaintiff maintained an ownership interest in the credit card account and the monetary value thereof and therein.

46. Defendant converted Plaintiff's above referenced property to its own use, without Plaintiff's permission.

47. Plaintiff relied upon and trusted Defendant to handle Plaintiff's credit card account and to remit 100% of the funds thereunder. Defendant accepted and/or induced the confidence Plaintiff placed upon it.

48. As a direct and proximate result of Defendant's conversion of Plaintiff's property, Plaintiff has been damaged in that it has lost the use and benefit of its property; has been denied the use, possession, value and enjoyment of its property; and has been otherwise damaged as set forth above and herein, all to its damage both actual and punitive.

49. Plaintiff is entitled to a judgment for actual and punitive damages.

**FOR A SIXTH CAUSE OF ACTION**  
**(Unfair Trade Practices)**

50. Plaintiff hereby reasserts and realleges each and every allegation set forth above as if set forth here verbatim.

51. Defendant has improperly retained Plaintiff's profits through credit card payments and has sought and recovered an unreasonable profit, as it was not entitled to any profit from sales of petroleum products to Plaintiff by Plaintiff's alternate supplier.

52. This claim arises pursuant to the South Carolina Unfair Trade Practices Act.

53. The activities of the Defendant, above described, constitute "trade or commerce" as defined by the S.C. Code § 39-5-10, et. seq., (as amended).

54. The actions of the Defendant, above described, constitute unfair and deceptive acts and practices in the conduct of trade and commerce, as prohibited by the South Carolina Unfair Trade Practices Act, § 39-5-10, et. seq., and are willful violations thereof.

55. The actions of the Plaintiff have a real and substantial potential for repetition and affect the public interest.

56. As a direct and proximate violation of the South Carolina Unfair Trade Practices Act, Plaintiff has been damaged as set forth above and herein.

57. Plaintiff is entitled to treble damages, plus Attorney's fees and costs.

WHEREFORE, having fully complained against the Defendant herein, Plaintiff prays for an order of this Court for judgment against the Defendant for actual damages; for treble actual damages; for punitive damages; for costs; for interest and fees; for attorney's fees; and for such other and further relief as this Court may deem just and proper.

MOORE, TAYLOR & THOMAS, P.A.

BY: 

S. Jahue Moore  
William H. Edwards  
Attorneys for the Plaintiff  
1700 Sunset Boulevard  
Post Office Box 5709  
West Columbia, SC 29171  
(803) 796-9160

West Columbia, South Carolina  
September 16, 2010

J. Boone Aiken, III •  
Saunders M. Bridges, Jr. ••  
E. Glenn Elliott •  
Matthew N. Tyler •  
James M. Saleeby, Jr.  
J. David Banner  
Samuel F. Arthur, III  
Jay R. Lee  
Preston B. Dawkins  
Carrie A. Fox  
J. Rufus Bratton, III  
John G. Hofler, III

# Aiken Bridges Attorneys at Law

JDB@AIKENBRIDGES.COM  
843-669-8787, ext. 306  
Facsimile: 843-664-0097

Alvin A. Coleman (1930-1995)

November 18, 2010

• Certified Mediator/Arbitrator  
+ Also Admitted District of Columbia

The Honorable Cathy M. Phillips  
Clerk of Court for Anderson County  
P. O. Box 8002  
Anderson, SC 29622-8002

Re: Drake Convenience, LLC vs. Cary Oil Company, Inc. vs. Beck Enterprises, Inc.,  
Mohamed Mereby, Shirley Mereby and O'Dell Oil Company, Inc.  
C/A No. 2010-CP-04-03351  
AB File No. 28792

Dear Ms. Phillips:

Enclosed with this letter please find the original and three copies of the Answer, Counterclaim and Third-Party Complaint of Defendant Cary Oil Company, Inc. with regard to the above-referenced matter. Please file the original with your Court and return three clocked copies to me in the return envelope provided for your convenience.

It is our information that this matter has been placed upon the trial roster by Attorney William H. Edwards, and I would appreciate your noting me as Attorney for the Defendant/Third-Party Plaintiff.

By copy of this letter, I am serving a copy of the above Answer, Counterclaim and Third-Party Complaint on counsel for the Plaintiff.

Should you have any questions or comments, please do not hesitate to contact me.

With kind personal regards, I am

Sincerely yours,

J. DAVID BANNER

For JDB

JDB/bdg  
Enclosure

Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.

181 East Evans St. Suite 409  
Florence, South Carolina 29506

www.aikenbridges.com

Post Office Drawer 1931  
Florence, South Carolina 29503

Aiken  
Bridges  
Attorneys at Law

November 18, 2010

Page 2

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Cc:

William H. Edwards, Esquire  
S. Jahue Moore, Esquire  
Moore, Taylor & Thomas, PA  
P. O. Box 5709  
West Columbia, SC 29171

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ANDERSON )  
 )  
 Drake Convenience, LLC, )  
 )  
                   Plaintiff, )  
 )  
 vs. )  
 )  
 Cary Oil Company, Inc., )  
 )  
                   Defendant. )  
 )  
 \_\_\_\_\_ )  
 Cary Oil Company, Inc., )  
 )  
                   Third-Party Plaintiff, )  
 )  
 Vs. )  
 )  
 Beck Enterprises, Inc., Mohamed Mereby, )  
 Shirley Mereby, and O'Dell Oil Company, Inc., )  
 )  
                   Third-Party Defendants. )  
 \_\_\_\_\_ )

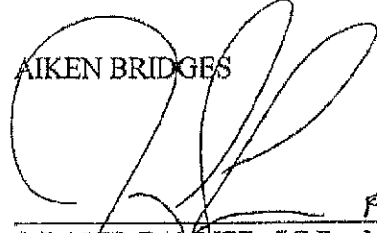
IN THE COURT OF COMMON PLEAS  
 C/A NO.: 2010-CP-04-03351

**SUMMONS**  
**(Jury Trial Requested)**

TO: THE ABOVE-NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his offices at 181 E. Evans Street, P. O. Drawer 1931, Florence, South Carolina, 29503, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint in the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

AIKEN BRIDGES

  
For - DB  
J. DAVID BANNER, SC Bar No. 15611  
181 E. EVANS STREET, SUITE 409  
P. O. DRAWER 1931  
FLORENCE, SC 29503  
(843) 669-8787

Florence, South Carolina  
November 18, 2010

ATTORNEYS FOR THE DEFENDANT/  
THIRD-PARTY PLAINTIFF CARY OIL  
COMPANY, INC.



3. Paragraph 3 of the Complaint calls for a legal conclusion for which the Defendant/Third-Party Plaintiff is not required to admit or deny.

4. As to paragraph 4 (incorrectly identified as paragraph 3), the Defendant/Third-Party Plaintiff does not contest subject matter jurisdiction but reserves the right to move this Court for an Order for change of venue.

5. Admits the allegations contained in paragraph 5 (incorrectly identified as paragraph 4) of the Complaint.

6. As to paragraph 6 (incorrectly identified as paragraph 5), the Defendant/Third-Party Plaintiff admits that it was the exclusive supplier for the service station located at 1398 North Pleasantburg Drive in Greenville County, South Carolina; except as herein admitted, the remaining allegations contained in paragraph 5 of the Complaint are denied.

7. The Defendant/Third-Party Plaintiff is without sufficient information and belief as to the allegations contained in paragraph 7 (incorrectly identified as paragraph 6) of the Complaint in order to admit or deny the same. To the extent necessary, the Defendant/Third-Party Plaintiff denies the allegations contained herein.

8. Denies the allegations contained in paragraph 8 (incorrectly identified as paragraph 7) of the Complaint.

9. Denies the allegations contained in paragraph 9 (incorrectly identified as paragraph 8) of the Complaint.

10. Denies the allegations contained in paragraph 10 (incorrectly identified as paragraph 9) of the Complaint.

11. As to paragraph 11 (incorrectly identified as paragraph 10), the Defendant/Third-Party Plaintiff admits that it is owed an amount of money for damages as a result of the actions of

the Third-Party Defendants and the Plaintiff; except as herein admitted, the remaining the allegations contained in paragraph 11 of the Complaint are denied.

12. As to paragraph 12 (incorrectly identified as paragraph 11) of the Complaint, the Defendant/Third-Party Plaintiff admits that it is not aware of any contractual agreement with the Plaintiff; the remaining allegations contained in paragraph 12 of the Complaint call for a legal conclusion for which this Defendant/Third-Party Plaintiff is not required to admit or deny.

13. As to paragraph 13 (incorrectly identified as paragraph 12), the Defendant/Third-Party Plaintiff admits that it supplied petroleum products to this location pursuant to a contractual agreement with Beck Enterprises, Inc.; except as herein admitted, the Defendant/Third-Party Plaintiff is without sufficient information and belief as to the remaining allegations contained in paragraph 13 in order to admit or deny the same.

14. Paragraph 14 (incorrectly identified as paragraph 13) of the Complaint calls for a legal conclusion for which the Defendant/Third-Party Plaintiff is not required to admit or deny.

15. Denies the allegations contained in paragraph 15 (incorrectly identified as paragraph 14) of the Complaint.

16. Denies the allegations contained in paragraph 16 (incorrectly identified as paragraph 15) of the Complaint.

17. Admits the allegations contained in paragraph 17 (incorrectly identified as paragraph 16) of the Complaint.

18. Denies the allegations contained in paragraph 18 (incorrectly identified as paragraph 17) of the Complaint.

19. As to paragraph 19 (incorrectly identified as paragraph 18), the Defendant/Third-Party Plaintiff is without sufficient information and belief as to the allegations in order to admit

or deny the same. To the extent necessary, the Defendant/Third-Party Plaintiff denies the allegations contained in paragraph 19 of the Complaint.

20. Denies the allegations contained in paragraph 20 (incorrectly identified as paragraph 19) of the Complaint.

21. Denies the allegations contained in paragraph 21 (incorrectly identified as paragraph 20) of the Complaint.

22. Denies the allegations contained in paragraph 22 (incorrectly identified as paragraph 21) of the Complaint.

23. As to paragraph 23 (incorrectly identified as paragraph 22), the Defendant/Third-Party Plaintiff admits that it has retained \$27,413.30 due to damages owed to the Defendant/Third-Party Plaintiff as a result of the actions of the Plaintiff and Third-Party Defendants.

24. Denies the allegations contained in paragraph 24 (incorrectly identified as paragraph 23) of the Complaint.

25. Denies the allegations contained in paragraph 25 (incorrectly identified as paragraph 24) of the Complaint.

26. Denies the allegations contained in paragraph 26 (incorrectly identified as paragraph 25) of the Complaint.

27. Paragraph 27 (incorrectly identified as paragraph 26) of the Complaint calls for a legal conclusion for which the Defendant/Third-Party Plaintiff is not required to admit or deny.

28. Denies the allegations contained in paragraph 28 (incorrectly identified as paragraph 27) of the Complaint.

29. Denies the allegations contained in paragraph 29 (incorrectly identified as paragraph 28) of the Complaint.

30. The Defendant reiterates paragraphs 1 through 29 as if repeated herein verbatim.

31. Denies the allegations contained in paragraph 31 (incorrectly identified as paragraph 30) of the Complaint.

32. Denies the allegations contained in paragraph 32 (incorrectly identified as paragraph 31) of the Complaint.

33. Denies the allegations contained in paragraph 33 (incorrectly identified as paragraph 32) of the Complaint.

34. Denies the allegations contained in paragraph 34 (incorrectly identified as paragraph 33) of the Complaint.

35. The Defendant reiterates paragraphs 1 through 34 as if repeated herein verbatim.

36. Denies the allegations contained in paragraph 36 (incorrectly identified as paragraph 35) of the Complaint.

37. Paragraph 37 (incorrectly identified as paragraph 36) of the Complaint calls for a legal conclusion for which the Defendant/Third-Party Plaintiff is not required to admit or deny.

38. Paragraph 38 (incorrectly identified as paragraph 37) of the Complaint calls for a legal conclusion for which the Defendant/Third-Party Plaintiff is not required to admit or deny.

39. Denies the allegations contained in paragraph 39 (incorrectly identified as paragraph 38) of the Complaint.

40. Denies the allegations contained in paragraph 40 (incorrectly identified as paragraph 39) of the Complaint.

41. The Defendant reiterates paragraphs 1 through 40 as if repeated herein verbatim.

42. Denies the allegations contained in paragraph 42 (incorrectly identified as paragraph 41) of the Complaint.

43. Denies the allegations contained in paragraph 43 (incorrectly identified as paragraph 42) of the Complaint.

44. Denies the allegations contained in paragraph 44 (incorrectly identified as paragraph 43) of the Complaint.

45. The Defendant reiterates paragraphs 1 through 44 as if repeated herein verbatim.

46. Denies the allegations contained in paragraph 46 (incorrectly identified as paragraph 45) of the Complaint.

47. Denies the allegations contained in paragraph 47 (incorrectly identified as paragraph 46) of the Complaint.

48. Denies the allegations contained in paragraph 48 (incorrectly identified as paragraph 47) of the Complaint.

49. Denies the allegations contained in paragraph 49 (incorrectly identified as paragraph 48) of the Complaint.

50. Denies the allegations contained in paragraph 50 (incorrectly identified as paragraph 49) of the Complaint.

51. The Defendant reiterates paragraphs 1 through 50 as if repeated herein verbatim.

52. Denies the allegations contained in paragraph 52 (incorrectly identified as paragraph 51) of the Complaint.

53. Denies the allegations contained in paragraph 53 (incorrectly identified as paragraph 52) of the Complaint.

54. Denies the allegations contained in paragraph 54 (incorrectly identified as paragraph 53) of the Complaint.

55. Denies the allegations contained in paragraph 55 (incorrectly identified as paragraph 54) of the Complaint.

56. Denies the allegations contained in paragraph 56 (incorrectly identified as paragraph 55) of the Complaint.

57. Denies the allegations contained in paragraph 57 (incorrectly identified as paragraph 56) of the Complaint.

58. Denies the allegations contained in paragraph 58 (incorrectly identified as paragraph 57) of the Complaint.

59. The Defendant/Third-Party Plaintiff denies each and every material allegation contained in the Complaint not specifically herein before admitted.

**FOR A SECOND DEFENSE**  
(Comparative Negligence)

60. Further answering the Plaintiff's Complaint, and as a Second Defense thereto, the Defendant/Third-Party Plaintiff reiterates the allegations contained in the First Defense as fully as if repeated herein..

61. The Defendant/Third-Party Plaintiff further alleges that if any injuries and/or damages are sustained by the Plaintiff, the said injuries and/or damages are caused by the greater negligence and/or willfulness of the Plaintiff, which negligence and/or willfulness exceeds that of the Defendant/Third-Party Plaintiff, if any, without which greater negligence and/or willfulness on the part of the Plaintiff, the said alleged injury and/or damage would not have occurred or sustained and for that reason, the Plaintiff is totally barred from recovery. Should it be determined that the Plaintiff's negligence does not outweigh any negligence on the part of the Defendant/Third-Party

Plaintiff, any award to the Plaintiff should be reduced in proportion to the amount of negligence on the Plaintiff's part.

**FOR A THIRD DEFENSE**  
(Unclean Hands)

62. Further answering the Plaintiff's Complaint, and as a Third Defense thereto, the Defendant/Third-Party Plaintiff reiterates the allegations contained in the First and Second Defenses as fully as if repeated herein.

63. The Defendant/Third-Party Plaintiff asserts the affirmative defense of unclean hands as a complete bar to the Plaintiff's Complaint.

**FOR A FOURTH DEFENSE**  
(Fraud)

64. Further answering the Plaintiff's Complaint, and as a Fourth Defense thereto, the Defendant/Third-Party Plaintiff reiterates the allegations contained in the First, Second and Third Defenses as fully as if repeated herein.

65. The Defendant/Third-Party Plaintiff asserts the affirmative defense of fraud as a complete bar to the Plaintiff's Complaint.

**FOR A FIFTH DEFENSE AND BY WAY OF A COUNTERCLAIM  
AS TO THE PLAINTIFF AND A THIRD-PARTY COMPLAINT AS TO  
ALL NAMED THIRD-PARTY DEFENDANTS**

66. The Defendant/Third-Party Plaintiff Cary Oil Company, Inc., (hereinafter "Cary Oil") is a corporation organized under and pursuant to the laws of the State of North Carolina and is authorized to conduct business in the State of South Carolina.

67. The Plaintiff, Drake Convenience, LLC (hereinafter "Drake") upon information and belief, is a limited liability company organized under and pursuant to the laws of the State of South Carolina.

68. Third-Party Defendant Beck Enterprises, Inc. (hereinafter "Beck") is a corporation organized under and pursuant to the laws of the State of South Carolina.

69. Third-Party Defendants Mohamed Mereby and Shirley Mereby (hereinafter "Mereby") are citizens and residents of the State of South Carolina, County of Greenville.

70. Third-Party Defendant O'Dell Oil Company, Inc. (hereinafter "O'Dell") is a corporation organized under and pursuant to the laws of the State of South Carolina.

71. The allegations contained in the Complaint, Counterclaim and Third-Party Complaint arise out of a Motor Fuel Supply Agreement entered into between Third-Party Plaintiff Cary Oil and Beck for purposes of supplying branded motor fuel to a service station located at 1398 North Pleasantburg Road in Greenville, South Carolina. A copy of the Motor Fuel Supply Agreement is attached and incorporated herein by reference as Exhibit "A" to the Plaintiff's Complaint.

72. This Court has subject matter jurisdiction over the parties referenced herein but Cary Oil reserves its right to move the Court for an Order for change of venue to the County of Greenville, should it be determined this is the proper venue.

73. Third-Party Defendants Mereby executed an Unconditional Guarantee to Cary Oil whereby they would make punctual payment of all liabilities and obligations owed to Cary Oil. A copy of the Unconditional Guarantee is attached hereto and incorporated herein by reference as Exhibit "1".

74. Cary Oil and Beck entered into a valid and enforceable Motor Fuel Supply Agreement for Exxon branded motor fuels on or about May 1, 2003 for a term of ten (10) years. The Motor Fuel Supply Agreement created certain obligations and requirements by Cary Oil and Beck which at all times material hereto, were being met by Cary Oil. O'Dell and Drake interfered

with the contractual relationship between Cary Oil and Beck causing a breach of the Supply Agreement contract thereby damaging Cary Oil.

**FOR A SIXTH DEFENSE AND BY WAY OF A FIRST CAUSE OF ACTION BY  
COUNTERCLAIM AS TO PLAINTIFF DRAKE CONVENIENCE, LLC AND THIRD-  
PARTY PLAINTIFF O'DELL OIL COMPANY, INC.**  
(Civil Conspiracy)

75. Cary Oil hereby reasserts and realleges paragraphs 1 through 74 as if repeated herein verbatim.

76. At all times material hereto, Cary Oil and Beck enjoyed a special relationship pursuant to the supply agreement entered into between Cary Oil and Beck.,

77. At some time prior to June 2010, Drake, and/or its agents, along with O'Dell and/or its agents, conspired to interfere with the contractual relationship between Cary Oil and Beck so as to allow O'Dell to begin supplying motor fuel to Drake at the service station located at 1398 N. Pleasantburg Road in Greenville, South Carolina. The actions by Drake and O'Dell were at all times unknown to Cary Oil.

78. The actions by Drake and O'Dell were fraudulent, dishonest and constituted unfair dealing in light of their efforts to undercut and interfere with the supply agreement entered into and enjoyed by Cary Oil and Beck. As a result of these fraudulent actions, Beck breached its obligations pursuant to the supply agreement.

79. As a result of the fraudulent actions between Drake and O'Dell, thereby causing Beck to breach the supply agreement, Cary Oil has suffered special damages.

80. Cary Oil Company, Inc. is entitled to a judgment against the Plaintiff and O'Dell for actual and punitive damages.

**FOR A SEVENTH DEFENSE AND BY WAY OF A SECOND CAUSE OF ACTION  
AS TO THIRD-PARTY DEFENDANT O'DELL OIL COMPANY, INC.**  
(Intentional Inference with a Contractual Relationship)

81. Cary Oil hereby reasserts and realleges paragraphs 1 through 80 as if repeated herein verbatim.

82. At all times material hereto, a valid supply agreement contract existed between Cary Oil and Beck.

83. O'Dell had knowledge of the existence of the supply agreement between Cary Oil and Beck.

84. O'Dell intentionally interfered with the supply agreement contract between Cary Oil and Beck thereby causing a breach of the contract. As a result of O'Dell's intentional actions, O'Dell began supplying motor fuel to Drake.

85. O'Dell lacked any justification for its intentional interference in causing the contractual breach.

86. As a result of O'Dell's intentional conduct and actions, Cary Oil has suffered damages.

87. Cary Oil is entitled to a judgment against O'Dell for actual and punitive damages.

**FOR AN EIGHTH DEFENSE AND BY WAY OF A THIRD CAUSE OF ACTION**  
**AS TO THIRD-PARTY DEFENDANT O'DELL OIL COMPANY, INC.**  
(Breach of Contract accompanied by Fraudulent Acts)

88. Cary Oil hereby reasserts and realleges paragraphs 1 through 87 as if repeated herein verbatim.

89. At all times material hereto, a valid supply agreement contract existed between Cary Oil and Beck.

90. O'Dell had knowledge of the existence of the supply agreement between Cary Oil and Beck.

91. O'Dell intentionally interfered with the supply agreement contract between Cary Oil and Beck thereby causing a breach of the contract. The actions by O'Dell constituted unfair dealing, were dishonest and fraudulent. As a result of O'Dell's intentional and fraudulent actions, O'Dell began supplying motor fuel to Drake.

92. O'Dell lacked any justification for its intentional and fraudulent interference in causing the contractual breach.

93. As a result of O'Dell's intentional and fraudulent conduct and actions, Cary Oil has suffered damages.

94. Cary Oil is entitled to a judgment against O'Dell for actual and punitive damages.

**FOR A NINTH DEFENSE AND BY WAY OF A FOURTH CAUSE OF ACTION**  
**AS TO O'DELL OIL COMPANY, INC.**  
(Unfair Trade Practices)

95. The Defendant hereby reasserts and realleges paragraphs 1 through 94 as if repeated herein verbatim.

96. Based on O'Dell's aforementioned conduct, as alleged, it has engaged in unfair methods of competition and unfair or deceptive acts in the conduct of trade or commerce.

97. Cary Oil would show that O'Dell's actions in intentionally interfering with the contractual relationship between Cary Oil and Beck are actions which are capable of repetition and affect the public interest.

98. O'Dell's aforementioned actions were intentional and willful.

99. As a result of O'Dell's conduct, Cary Oil has sustained damages.

100. Cary Oil is entitled to a judgment against O'Dell for treble damages, punitive damages, and attorney's fees and costs.

**FOR A TENTH DEFENSE AND BY WAY OF A FIRST CAUSE OF ACTION AS TO  
THIRD-PARTY DEFENDANTS BECK ENTERPRISES, INC., MOHAMMAD MEREBY  
AND SHIRLEY MEREBY**  
(Breach of Contract)

101. The Defendant hereby reasserts and realleges paragraphs 1 through 100 as if repeated herein verbatim.

102. Cary and Beck entered into a Motor Fuel Supply Agreement on or about May 1, 2003 for a term of ten (10) years, attached and incorporated herein by reference as Exhibit "A" to the Plaintiff's Complaint. By execution of the aforementioned supply agreement, both Cary Oil and Beck were obligated to meet certain requirements. Cary Oil met all of its obligations owed to Beck under the supply agreement.

103. There is implied in every contract a covenant of good faith and fair dealing.

104. Beck has breached the supply agreement in that it has unjustifiably failed to perform its obligations pursuant to the contract.

105. As a direct and proximate result of the breach by Beck, Cary Oil has suffered damages.

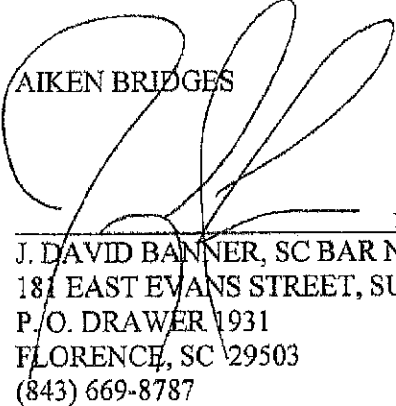
106. Mereby unconditionally guaranteed due and punctual payment of all liabilities and obligations on behalf of Beck pursuant to the unconditional guarantee executed by Mereby. As a result of the breach of the Supply Agreement by Beck, Mereby is personally liable, jointly and severally, for said breach.

107. Cary Oil is entitled to a judgment against Beck and Mereby, joint and several, for actual and punitive damages.

**WHEREFORE**, having fully answered, the Defendant, Cary Oil Company, Inc., prays that the Plaintiff's Complaint be dismissed, with costs, and that judgment be entered against the Plaintiff and Third-Party Defendants for actual damages, punitive damages, treble damages,

attorney's fees and costs and for such other and further relief as this Court may deem just and proper.

AIKEN BRIDGES

  
Fou - DB  
J. DAVID BANNER, SC BAR NO. 15611  
181 EAST EVANS STREET, SUITE 409  
P.O. DRAWER 1931  
FLORENCE, SC 29503  
(843) 669-8787

Florence, South Carolina  
November 18, 2010

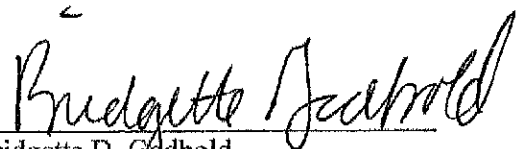
ATTORNEYS FOR THE DEFENDANT  
CARY OIL COMPANY, INC.

CERTIFICATE OF SERVICE

I, the undersigned employee of Aiken Bridges, do hereby certify that the foregoing ANSWER, COUNTERCLAIM AND THIRD-PARTY COMPLAINT OF DEFENDANT CARY OIL COMPANY, INC. this day has been served by mailing copies thereof, postage prepaid, to the following person(s), this 18th day of November, 2010:

William H. Edwards, Esquire  
S. Jahue Moore, Esquire  
Moore, Taylor & Thomas, PA  
P. O. Box 5709  
West Columbia, SC 29171

*Attorney for the Plaintiff*

  
Bridgette D. Godbold

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2012 APR - 3 A 09:38

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

Stop-A-Minit #17, LLC, )

FILED-CLERK OF COURT )  
GREENVILLE, CO. SC )  
PAUL B. WALKER )  
Plaintiff(s) )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 -CP - 23 -2325

vs. )

2012 APR -3 A )

Beck Enterprises, Inc., )

Defendant(s) )

(Please Print)

Submitted By: William H. Edwards

Address: P.O. Box 5709

West Columbia, SC 29171

SC Bar #: SC - 71199; Fed. 9304

Telephone #: (803) 796-9160 x154

Fax #: (803) 791-8410

Other:

E-mail: will@mttlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
- Constructions (100)
  - Debt Collection (110)
  - Employment (120)
  - General (130)
  - Breach of Contract (140)
  - Other (199)

- Torts - Professional Malpractice**
- Dental Malpractice (200)
  - Legal Malpractice (210)
  - Medical Malpractice (220)
  - Previous Notice of Intent Case #  
20\_\_-CP-\_\_\_\_
  - Notice/ File Med Mal (230)
  - Other (299)

- Torts - Personal Injury**
- Assault/Slander/Libel (300)
  - Conversion (310)
  - Motor Vehicle Accident (320)
  - Premises Liability (330)
  - Products Liability (340)
  - Personal Injury (350)
  - Wrongful Death (360)
  - Other (399)

- Real Property**
- Claim & Delivery (400)
  - Condemnation (410)
  - Foreclosure (420)
  - Mechanic's Lien (430)
  - Partition (440)
  - Possession (450)
  - Building Code Violation (460)
  - Other (499)

- Inmate Petitions**
- PCR (500)
  - Mandamus (520)
  - Habeas Corpus (530)
  - Other (599)

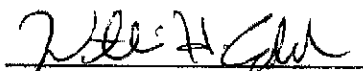
- Judgments/Settlements**
- Death Settlement (700)
  - Foreign Judgment (710)
  - Magistrate's Judgment (720)
  - Minor Settlement (730)
  - Transcript Judgment (740)
  - Lis Pendens (750)
  - Transfer of Structured Settlement Payment Rights Application (760)
  - Other (799)

- Administrative Law/Relief**
- Reinstate Driver's License (800)
  - Judicial Review (810)
  - Relief (820)
  - Permanent Injunction (830)
  - Forfeiture-Petition (840)
  - Forfeiture-Consent Order (850)
  - Other (899)

- Appeals**
- Arbitration (900)
  - Magistrate-Civil (910)
  - Magistrate-Criminal (920)
  - Municipal (930)
  - Probate Court (940)
  - SCDOT (950)
  - Worker's Comp (960)
  - Zoning Board (970)
  - Public Service Commission (990)
  - Employment Security Comm (991)
  - Other (999)

- Special/Complex /Other**
- Environmental (600)
  - Automobile Arb. (610)
  - Medical (620)
  - Other (699)
  - Pharmaceuticals (630)
  - Unfair Trade Practices (640)
  - Out-of State Depositions (650)
  - Motion to Quash Subpoena in an Out-of-County Action (660)
  - Sexual Predator (610)

Submitting Party Signature:



Date: March 30, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FC MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**